

EXECUTIVE CHAMBERS

HONOLULU

July 13, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2786

Honorable Members  
Twenty-Second Legislature  
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2786, entitled "A Bill for an Act Relating to Arbitration."

The purpose of this bill is to amend section 431:10-242, Hawaii Revised Statutes, to require that a policyholder, a beneficiary, or a person acquiring the rights of a policyholder or beneficiary be awarded attorney's fees and costs when an arbitrator or arbitration panel orders an insurer, who contested liability, to pay benefits under the policy.

This bill is objectionable because it would encourage litigation, especially in what are now relatively uncomplicated uninsured and underinsured motorist (UM and UIM) disputes and arbitrations, and would unfairly require that attorney's fees and costs be imposed on the insurer in every case in which an award is made, even if the demand on the insurer greatly exceeded the amount actually awarded.

As passed, language has been added to the original bill that expressly requires the awarding of attorney's fees and costs to a beneficiary or policyholder who successfully establishes an insurer's liability under an insurance policy in arbitration proceedings when the insurer has "contested its liability under a policy." This mandate would encourage a claimant to demand policy limits in every UM and UIM case, knowing that even if only a part of that limit is finally awarded, the claimant's attorney's fees and costs would be mandatorily imposed upon the insurer. The result would discourage reasonable and good faith

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efforts to compromise and settle claims, and would ultimately increase the cost of insurance to consumers.

For the foregoing reasons, I am returning House Bill No. 2786 without my approval.

Respectfully,

LINDA LINGLE  
Governor of Hawaii